

1 RECORD OF ORAL HEARING.

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4 UNITED STATES PATENT AND TRADEMARK OFFICE

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7 BEFORE THE BOARD OF PATENT APPEALS
8 AND INTERFERENCES
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11 Ex parte TODD CHARLES, NELSON SHIH-HSUN,
12 and LAWRENCE ALAN GRAHAM
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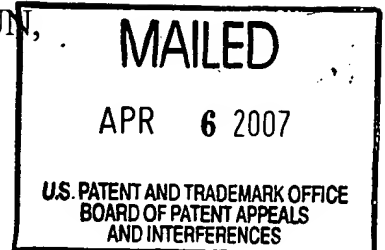
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15 Appeal 2007-0364
16 Application 09/998,661
17 Technology Center 1700
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20 Oral Hearing Held: February 6, 2007
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24 Before BRADLEY R. GARRIS, THOMAS A. WALTZ, and
25 CATHERINE Q. TIMM,
26 Administrative Patent Judges.
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1 The above-entitled matter came on for hearing on Tuesday,
2 February 6, 2007, commencing at 10:02 a.m., at The U.S. Patent and
3 Trademark Office, 600 Dulany Street, Alexandria, Virginia, before Deborah
4 Rinaldo, RPR, Notary Public, CCR No. 0315067.

5 JUDGE GARRIS: Sir, as you know, you have about 20
6 minutes to present your case and you may begin whenever you are ready.

7 MR. WYDEVEN: Good morning. This invention is directed
8 to a methodology for creating stackable triangular tortilla chips. I think most
9 people are familiar with stackable potato chips. Pringles is a commercial
10 example that come to mind where the chips are all sort of a saddle-shaped
11 chip that are stacked and packaged in a cylindrical canister.

12 People, I think, are also familiar with triangular tortilla chips.
13 A commercial example that comes to mind are Doritos, which are triangular
14 and are not uniformly shaped and are not stackable and are packaged loosely
15 in a plastic bag.

16 The inventors here have come up with an efficient methodology
17 for marrying those two technologies and those two types of chips to develop
18 a method for creating a stackable triangular tortilla chip. In summary, the

method, and there is only one independent claim, claim 1 in this case, involves the steps of cutting triangular preforms from a sheet of masa, or corn dough, enclosing the preforms in molds with a consistent orientation, with alternating patterns of the base edges and the apexes of adjacent chips being reversed, restraining the preforms in molds while cooking the chips and maintaining that alternating orientation, and then removing the cooked chips from the molds while still maintaining this alternating orientation.

The claims have been rejected under section 103 as being obvious in view of four references, which I'll mention by the inventor name. There's the Wisdom patent. It's in view of Hilton, further in view of Khalsa and further in view of MacKendrick.

We respectfully submit that the rejection should be reversed because it fails to state the prima facie case of obviousness. The cited references do not teach all of the steps of the rejected claims and there is no motivation to combine or modify the cited references to derive the claimed invention.

In particular, the cited references do not teach restraining triangular tortilla chip preforms within molds while the preforms are

1 arranged in alternating orientations. And then removing cooked triangular
2 chips from the molds while maintaining the chips in this alternating
3 orientation.

4 The Wisdom patent is the primary reference. It dates back to
5 October 1978, and it is primarily directed to a method for toasting chip
6 dough and equilibrating the moisture content of the tortilla chips.

7 It does mention that a preferred product is a chip-type product,
8 which conforms to the shape of a mold and has uniform size and shape and
9 is capable of being stacked. It doesn't provide any sort of enablement or
10 description of exactly how you would do that, how you would create these
11 uniformly sized and shaped chips.

12 It certainly doesn't describe any particular types of molds. It
13 doesn't describe triangular molds or alternating triangular preforms in
14 alternating orientations.

15 JUDGE WALTZ: Excuse me. I notice you said it doesn't
16 disclose triangular molds. But your claim 1 doesn't limit it to triangular
17 molds.

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1 MR. WYDEVEN: That's correct. I misspoke. It doesn't --

2 JUDGE WALTZ: Preforms in a mold. So, in fact, the mold is
3 usually rectangular in shape, isn't it, to have the triangles base to apex next
4 to each other, because two of them would form a square?

5 MR. WYDEVEN: That's right. The molds themselves are sort
6 of a trough shape. I misspoke.

7 JUDGE WALTZ: Would you consider the steel plates of
8 Wisdom, don't they act as a mold?

9 MR. WYDEVEN: As I read Wisdom, when they talk about
10 those steel plates, the strip of dough that is going through there is about
11 seven or eight times thinner than the spacing between the plates.

12 And what that is, is an apparatus for moving that strip through
13 the parallel plates, and the top plate has a hole in it, and they put some sort
14 of a heated rod through that hole in contact with the top of the dough to
15 provide localized toasting of the dough. I don't --

16 JUDGE WALTZ: But don't those steel plates physically
17 restrain the preforms and then they keep them in the steel plates while they
18 send them through the frying oil?

1 MR. WYDEVEN: I didn't read it that way. I don't think they
2 describe keeping them between the plates in the frying oil. I may have
3 missed that. I only saw the part where they are talking about the steel plates
4 and the localized toasting.

5 And again, the dimensions that are given in the specification
6 describe a spacing between the plates, which is on the order of seven or eight
7 times wider than the space between the thickness of the masa dough.

8 Hilton describes an apparatus for packaging stacked chips into a
9 cylindrical cannister. The background section mentions that uniformly
10 shaped chips can be physically restrained in a mold while being fried.

11 There is no suggestion or description of triangular preforms or
12 holding triangular preforms in a mold while they are oriented in an
13 alternating pattern or removing them while maintaining that alternating
14 pattern.

15 JUDGE WALTZ: Don't many of the references you are talking
16 about, the desired shape of the preforms, so that any shape you would want
17 is well within the skill of the art, triangular, circular, square?

MR. WYDEVEN: Well, I guess that's where I would respectfully disagree, that triangular is, I think the examiner referred to it as an obvious design choice. And up until this invention, nobody has come up with a way to stack triangular chips.

We're not simply claiming triangular versus oval. The concept of starting off with a triangular preform, but not only having the triangular preform, but having them in these alternating patterns, molding them in these alternating patterns while you are frying them, removing them from the mold while they are still in the alternating patterns.

I'm getting ahead of myself here, but it's really not an obvious switch from one to the other, because, as we mentioned, I believe, in our reply brief, the prior art teaches, basically, preforms and chips that are symmetric, side to side, front to back, which a triangular chip is not.

If you are going to have those sorts of chips in these alternating patterns, you got to figure out a way to line them up down the road to stack them.

So while we don't claim -- I'm not suggesting we claim a methodology for rearranging them downstream; I'm suggesting that it

1 wouldn't have been obvious just based on the teaching of the cited art to
2 make that switch.

3 Khalsa does describe a conventional nonstackable tortilla chip
4 and does describe a cutting apparatus which would cut the preforms in this
5 alternating arrangement of base to apex.

6 Again, no teaching of restraining these triangular alternatingly
7 oriented chips in a mold while they are being fried, or removing them from
8 the molds after frying, while maintaining the alternate orientation.

9 MacKendrick is, I guess, the granddaddy of them. It goes back
10 to 1970 and probably relates to the original Pringles patent to Proctor &
11 Gamble. It describes oval-shaped preforms that are cut and then restrained
12 between saddle-shaped mold elements during the frying step.

13 Again, still no suggestion of triangular shape, alternating
14 orientations, restraining triangular alternately oriented preforms in a mold, or
15 removing the cooked triangular chips from the molds while maintaining the
16 alternate orientation.

1 So in going through the four references, you see that none of
2 them teaches all the elements -- together they don't teach all of the elements
3 of the claimed invention.

4 JUDGE WALTZ: Doesn't MacKendrick -- teaches that you
5 want to have a cutter roll to cut dough sections of a predetermined size and
6 shape. So why would that lead one skilled in the art to the cutter of Khalsa,
7 which they also teach desired dough shapes with a specific example to
8 triangular ones?

9 MR. WYDEVEN: Again, I would come back to what I said
10 earlier. Khalsa is not teaching stackable chips. It's teaching just triangular
11 chips, which are going to be fried loosely and allowed to take on whatever
12 orientation or shape they do in the frying oil.

13 To have stackable chips, it's pretty self-evident that they are
14 going to have to be lined up and, at some point, stacked before they can be
15 packaged. Khalsa, with the alternating orientation -- let me back up.

16 The alternating orientation of Khalsa would not direct someone
17 to necessarily employ that methodology in a stackable or in a process for

making stackable chips, because of the downstream problem of how do you align these chips and get them lined up and stacked.

I guess continuing on with that same thought, it's our position that the combination of these four references can only be based on hindsight, because they don't really talk about using triangular chips in these conventional methodologies for creating a symmetric or round saddle-shape chip in a stackable format.

This is kind of what's described in the background of our application. You have these prior art, Pringles, the oval shape, the saddle-shape chips that are in the canister.

You have the prior art, Doritos, which are triangular chips of no particular shape or form other than being triangular, but they are not consistently shaped in their surface so they can't be stacked.

And none of the prior art suggests marrying the two in the efficient manner that the inventors have in this case.

That concludes my presentation. I'm happy to answer any further questions.

1 JUDGE GARRIS: Do you have further questions?

2 JUDGE WALTZ: No, I don't.

3 JUDGE TIMM: No questions.

4 JUDGE GARRIS: Thank you very much for coming in. That

5 concludes our business. I appreciate your help in reviewing these issues.

6 (Whereupon, the proceedings at 10:14 a.m. were concluded.)